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OFFICE OF PETITIONS

FULBRIGHT & JAWORSKI L.L.P.
600 CONGRESS AVE.
SUITE 2400
AUSTIN TX 78701

In re Application No. 10/596,574 : DECISION ON REQUEST
Thomas, et al. : FOR
Filed: June 16, 2006 : RECONSIDERATION OF
Attorney Docket No.ESSR:117US/10607658 : PATENT TERM ADJUSTMENT

This is a decision on the petition filed on January 21, 2010, which is being treated as a petition under 37 CFR 1.705(b) requesting that the patent term adjustment indicated on the above-identified patent be corrected to indicate that the term of the above-identified patent is extended or adjusted by five hundred seventy-four (574) days.

For the reasons stated in the discussion of 37 CFR 1.702(a)(1), the filing receipt and notice of acceptance have been corrected to reflect a date of completion of all 35 U.S.C. 371 requirements 371(c) of June 19, 2006. Copies of the corrected filing receipt and notice of acceptance are enclosed.

The application for patent term adjustment is **GRANTED to the extent indicated herein.**

The Office has updated the PAIR screen to reflect that the correct patent term adjustment determination at the time of the mailing of the notice of allowance is **five hundred and seventy-one days**. A copy of the updated PAIR screen, showing the correct determination, is enclosed.

On December 8, 2009, the Office mailed a Determination of Patent Term Adjustment under 35 U.S.C. § 154(b) in the above-identified application. Applicants were advised that the patent term adjustment to date was 573 days. Pursuant to 35 U.S.C. 154(b)(1)(A) and 37 CFR 1.702(a)(1)¹, 573 days² of patent term

¹ 37 CFR § 1.702, provides grounds for adjustment of patent term due to examination delay under the Patent Term Guarantee Act of 1999 (original applications, other than designs, filed on or after May 29, 2000).

adjustment were accorded during the pendency of the application for Office delay prior to the issuance of patent.

In response, applicants timely³ filed the instant request for reconsideration of the patent term adjustment. Applicants state that the period of adjustment to the patent term should be 574 days, not 573 days. Specifically, applicants state that:

[a]pplicants note that the PAIR entries indicate an [Office] delay of 573 days for failure by the Patent Office to mail an action under 35 U.S.C. 132 not later than 14 months after the filing date (i.e, by August 16, 2007). However, applicants believe this to be in error, the period of delay from August 16, 2007 to March 12, 2009 (the date of mailing of the first office action) is 574 days. Applicants respectfully request an adjustment of the patent term from 573 days to 574 days, an adjustment of 1 day.

Excerpt taken from "Application for Patent Term Adjustment Under to 37 CFR § 1.705(b)", filed January 21, 2010, pgs. 1-2.

The application history has been reviewed and it has been determined that the period of adjustment to the patent term pursuant to 37 CFR 1.702(a)(1) and 37 CFR 1.703(a)(1) is 571 days, not 574 as applicants assert.

At the outset, it is noted that neither the applicants, or the Office, used the completion date of Monday June 19, 2006, in calculating the period of adjustment under 37 CFR 1.703(a)(1). As stated in 37 CFR 1.703(a)(1), the period of adjustment under § 1.702(a) is the number of days in the period beginning on the

(a) Failure to take certain actions within specified time frames. Subject to the provisions of 35 U.S.C. 154(b) and this subpart, the term of an original patent shall be adjusted if the issuance of the patent was delayed due to the failure of the Office to:

(1) Mail at least one of a notification under 35 U.S.C. 132 or a notice of allowance under 35 U.S.C. 151 not later than fourteen months after the date on which the application was filed under 35 U.S.C. 111(a) or fulfilled the requirements of 35 U.S.C. 371 in an international application;

² A restriction/election requirement was mailed on March 12, 2009, 14 months and 573 days after the completion of all 35 U.S.C. 371 requirements on June 17, 2006.

³ The Notice of Allowance and Issue Fee Due was mailed December 8, 2009; the issue fee was paid on January 27, 2010.

day after the date that is fourteen months after the date on which the application was filed under 35 U.S.C. 111(a) or fulfilled the requirements under 35 U.S.C. 371 and ending on the date of mailing of either an action under 35 U.S.C. 132, or a notice of allowance under 35 U.S.C. 151, whichever occurs first. It is noted that the requirements of 35 U.S.C. 371 (c)(1), (c)(2), and (c)(4) were received on June 16, 2006, however the application could not have been said to have fulfilled, or completed, all of the 35 U.S.C. 371 requirements until June 17, 2006. More specifically, where a request for early processing is not made pursuant to 35 U.S.C. 371(f), the date of completion of all 35 U.S.C. 371 requirements cannot be before the expiration of thirty months from the earliest priority date. See 37 U.S.C. 371(f). It is noted that applicants did not request early processing for this application pursuant to 35 U.S.C. 371(f). The earliest priority date for this application is December 17, 2003, and the date that is thirty months therefrom is Saturday, June 17, 2006. It is further noted, however, that where the date of commencement falls on a weekend, the commencement date, which, in this case, is also the date of completion of the requirements under 35 U.S.C. 371 requirements, is the next weekday. Accordingly, Monday June 19, 2006, is the date the application fulfilled all of the requirements under 35 U.S.C. 371 and is the date that should be used to calculate the examination delay under 37 CFR 1.703(a).⁴

Pursuant to 37 CFR 1.703(a)(1), the period of adjustment under 37 CFR 1.702(a) is 571 days, counting the number of days beginning on the day after the date that is fourteen months after the date on which the application fulfilled the requirements under 35 U.S.C. 371, August 20, 2007, and ending on the date of mailing of the restriction/election requirement, March 12, 2009. Accordingly, the period of adjustment of 573 days will be removed and a period of adjustment of 571 will be entered.

In view thereof, the patent term adjustment at the time of the mailing of the notice of allowance is 571 days (571 days of Office delay - 0 days of applicant delay).


⁴ Applicants are advised that a corrected "Notice of Acceptance of Application under 35 U.S.C.371 and 37 CFR 1.495" is not forthcoming. The instant decision serves as official notice that the date of completion of all 35 U.S.C. 371 requirements is June 19, 2006.

The \$200.00 fee set forth in 37 CFR 1.18(e) is being charged as authorized. No additional fees are required.

Applicants are reminded that any delays by the Office pursuant to 37 CFR 1.702(a)(4) and 1.702(b) and any applicant delays under 37 CFR 1.704(c)(10) will be calculated at the time of the issuance of the patent and applicants will be notified in the Issue Notification letter that is mailed to applicants approximately three weeks prior to issuance.

The Office of Data Management has been advised of this decision. This matter is being referred to the Office of Data Management for issuance of the patent.

Telephone inquiries specific to this matter should be directed to Kenya A. McLaughlin, Petitions Attorney, at (571) 272-3222.


Anthony Knight
Director
Office of Petitions

Enclosure: Copy of REVISED PAIR Screen

PTA Calculations for Application: 10/596574

Application Filing Date:	06/16/2006	PTO Delay (PTO):	573
Issue Date of Patent:		Three Years:	0
Pre-Issue Petitions:	0	Applicant Delay (APPL):	0
Post-Issue Petitions:	0	Total PTA (days):	571
PTO Delay Adjustment:	-2		

File Contents History

Number	Date	Contents Description	PTO	APPL	START
66	05/08/2010	ADJUSTMENT OF PTA CALCULATION BY PTO		2	
48	12/08/2009	MAIL NOTICE OF ALLOWANCE			
47	12/07/2009	ISSUE REVISION COMPLETED			
46	12/07/2009	DOCUMENT VERIFICATION			
45	12/07/2009	NOTICE OF ALLOWANCE DATA VERIFICATION COMPLETED			
44	12/07/2009	CASE DOCKETED TO EXAMINER IN GAU			
43	12/07/2009	NOTICE OF ALLOWABILITY			
42	11/13/2009	DATE FORWARDED TO EXAMINER			
41	11/03/2009	RESPONSE AFTER NON-FINAL ACTION			
40	08/03/2009	MAIL NON-FINAL REJECTION			
39	07/31/2009	NON-FINAL REJECTION			
36	02/20/2007	INFORMATION DISCLOSURE STATEMENT CONSIDERED			
27	05/19/2009	DATE FORWARDED TO EXAMINER			
26	05/12/2009	RESPONSE TO ELECTION / RESTRICTION FILED			
25	05/12/2009	REQUEST FOR EXTENSION OF TIME - GRANTED			
24	03/12/2009	MAIL RESTRICTION REQUIREMENT	573		5
23	03/11/2009	REQUIREMENT FOR RESTRICTION / ELECTION			
16	07/07/2008	CASE DOCKETED TO EXAMINER IN GAU			
15	10/04/2007	CASE DOCKETED TO EXAMINER IN GAU			
14	08/21/2007	CASE DOCKETED TO EXAMINER IN GAU			
13	08/02/2007	PG-PUB ISSUE NOTIFICATION			
12	06/28/2007	IFW TSS PROCESSING BY TECH CENTER COMPLETE			
11	02/20/2007	REFERENCE CAPTURE ON IDS			
		INFORMATION DISCLOSURE STATEMENT (IDS)			

10	02/20/2007	FILED			
7	02/20/2007	INFORMATION DISCLOSURE STATEMENT (IDS) FILED			
6	05/15/2007	APPLICATION DISPATCHED FROM OIPE			
5	06/17/2006	371 COMPLETION DATE			
4	04/25/2007	SENT TO CLASSIFICATION CONTRACTOR			
3	04/26/2007	NOTICE OF DO/EO ACCEPTANCE MAILED			
2	06/17/2006	CLEARED BY OIPE CSR			

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EXPLANATION OF PTA CALCULATION

EXPLANATION OF PTE CALCULATION

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